

HOUSE BILL REPORT

HB 2013

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to authorizing tribal and Indian nation law enforcement officers to act as Washington state peace officers.

Brief Description: Authorizing tribal and Indian nation law enforcement officers to act as Washington state peace officers.

Sponsors: Representatives Williams, O'Brien, Ericks, Appleton and Ormsby.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/14/07, 2/20/07 [DPS].

Brief Summary of Substitute Bill

- Authorizes the Washington State Patrol (WSP) to issue tribal law enforcement officers commissions to act as general authority Washington peace officers.
- Requires that the procedures regarding the issuance and revocation of a commission be set forth in a written agreement between the Chief of the WSP and a tribal government.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunt, Chair; Appleton, Vice Chair; Green, McDermott, Miloscia and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member and Kretz.

Staff: Alison Hellberg (786-7152).

Background:

Tribal Jurisdiction

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Law enforcement jurisdiction on tribal lands is governed by a combination of tribal law, state law, federal law, and treaty. In 1963, Washington assumed criminal and civil jurisdiction over tribal lands within the state. The state has since retroceded this jurisdiction back to the federal government and the tribes for several tribes in Washington. The state does not exercise civil or criminal jurisdiction over tribal members on tribal lands except in certain limited situations.

Tribes generally have their own court systems, criminal statutes, and law enforcement agencies. Tribes that are subject to state jurisdiction may enter into agreements with local law enforcement agencies to provide law enforcement service on tribal lands. Tribes and local law enforcement agencies also cooperate on law enforcement matters. For example, in 2001, after retrocession of state criminal jurisdiction went into effect, the Tulalip tribal government and Snohomish County entered into a cooperative law enforcement agreement.

Generally, tribal law enforcement officers do not have inherent jurisdiction to try and punish non-tribal persons on tribal lands. Tribal officers do, however, have the authority to stop non-tribal drivers to investigate possible violations of tribal law. If the non-tribal driver is suspected of a crime, the tribal officer may temporarily detain the driver and turn him or her over to state law enforcement officials.

Criminal Justice Training Commission (CJTC)

The CJTC provides basic law enforcement training, corrections training, and education programs for criminal justice personnel, including officers, corrections officers, fire marshals, and prosecuting attorneys. Basic law enforcement training is generally required of all law enforcement officers and consists of 720 hours of training.

In addition to the basic training requirement, all Washington law enforcement officers must also obtain and retain certification as peace officers as a condition of continuing employment as a peace officer. The CJTC is authorized to issue or revoke all peace officer certifications. As a prerequisite to certification, a peace officer must release to the CJTC all personnel files, termination papers, criminal investigation files, or any other files, papers, or information that are directly related to the certification or decertification of the officer. The CJTC has the authority to grant, deny, or revoke the certification of peace officers.

Last year, HB 2367 was enacted and gave the CJTC the authority to grant, deny, or revoke the certification of tribal police officers employed by any tribal government that has voluntarily requested certification for their law enforcement officers.

Summary of Substitute Bill:

The Chief of the WSP is authorized to issue a tribal law enforcement officer a commission to act as a general authority Washington peace officer. This means that the tribal law enforcement officer may enforce the criminal and traffic laws of Washington generally. A tribal law enforcement officer is a duly commissioned officer of the police or Public Safety

Department of a Washington Indian nation or tribe or a law enforcement officer employed by the United States Bureau of Indian Affairs and is assigned in Washington.

Prior to issuing a commission, the Chief of the WSP must enter into an agreement with the tribal government or the appropriate federal official. The agreement must outline the procedures to be followed in the issuance and revocation of commissions and the respective rights and responsibilities of the departments.

The agreement must contain the following conditions:

- The tribal government must show proof of adequate liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state.
- Each applicant must complete 720 hours of basic law enforcement training approved by the Washington State Criminal Justice Training Commission.
- The Chief of the WSP has the authority to suspend any commission for reasons solely within his or her discretion.
- If the tribal government or federal agency violates any provision of the agreement, the Chief of the WSP must suspend the agreement, with five days' notice, until the Chief is satisfied that the violation is corrected.
- A copy of any citation issued by a commissioned tribal officer must be submitted within five days to the WSP.
- Any citation issued by a commissioned tribal officer must be to a Washington court, except for citations issued to Indians within the boundaries of a reservation may be cited to a tribal court.
- The agreement will not confer any additional authority to a tribal court or tribal authority.
- The authority granted under any agreement is for areas within a reservation, except when a commissioned tribal officer is in fresh pursuit of an offender.
- Representatives of the WSP and the tribal government must meet annually to discuss the status of the agreement.

For purposes of civil liability, a tribal officer exercising general authority law enforcement power granted under this act shall be considered an employee of the jurisdiction that commissioned the officer.

County sheriffs continue to have the authority to appoint duly commissioned state or federally certified tribal law enforcement officers as deputy sheriffs to enforce the criminal and traffic laws of Washington.

Substitute Bill Compared to Original Bill:

A tribal officer exercising general authority law enforcement power granted under this act shall be considered an employee of the jurisdiction that commissioned the officer for purposes of civil liability.

The number of hours of basic law enforcement training required for applicants for a commission is raised to 720 hours from 400 hours. The term "hot pursuit" is replaced with "fresh pursuit."

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) In the normal course of business, tribal law enforcement officers come across non-tribal persons breaking laws on tribal land. This is a very common occurrence and tribal law enforcement officers will generally deliver offenders to state or county officials. Often tribal law enforcement officers cannot reach state and county officials and they have to let the offender go. Tribal law enforcement officers want to be able to enforce state laws and not be forced to let these people go free.

Many local jurisdictions have cooperative law enforcement agreements. For example, as part of an agreement with Whatcom County, the Lummi Nation may issue civil citations, but not criminal. This bill would expand what is already happening at local levels to a statewide level and extend it to criminal law.

The U.S. Department of Justice statistics show that Indians are two times as likely to be victims of crime than the general population. Most of the offenders are non-Indians. Tribal law enforcement cannot try these crimes in tribal court and non-tribal officers are hesitant to enter tribal land. This is leaving huge gaps in law enforcement.

Tribal law enforcement officers exceed training standards of Washington.

(Opposed) County sheriffs already have the authority to deputize tribal law enforcement officers. In this situation, an elected official is accountable for the actions of the tribal law enforcement officers. The main problem with this bill is the lack of accountability. Citizens will have no recourse if a tribal law enforcement officer violates their rights.

In general the expansion of general law enforcement authority is unwise. This is the case with granting more authority to park rangers, Liquor Control Board officers, or tribal law enforcement.

Persons Testifying: (In support) J. A. Goss, Jr., Tulalip Tribal Police Chief; Mike Lasnier, Squamish Tribal Police Chief; and Gary James, Lummi Tribal Police Chief.

(Opposed) Ronald Gamache, Yakima County Commissioner; and Don Pierce, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.